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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,933	03/01/2004	Rick Ost	WIO-100X	3231
46271	7590	09/16/2005	EXAMINER	
JEAN KYLE P. O. BOX 2274 HAMILTON, MT 59840-4274			ABBOTT, YVONNE RENEE	
			ART UNIT	PAPER NUMBER
			3644	

DATE MAILED: 09/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/790,933	OST ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Yvonne R. Abbott	3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 March 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 18-20 is/are allowed.
- 6) Claim(s) 1-11,13-15 is/are rejected.
- 7) Claim(s) 12,16 and 17 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/1/04, 9/27/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____ .                                  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 4, 5, 7, 8, 9,10, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Smart (6,247,885). Smart shows an apparatus capable of loading, transporting and stacking bales of hay comprising a vehicle frame supporting an operator cab (20) forward of a tiltable bed (70), the operator cab having a front and a top; an arc shaped track (32) extending from the front of the cab to above the top of the cab; a means to engage and move a bale; wherein the means to engage and move the bale, engages the bale at the front of the cab and moves the bale along the track to above the top of the cab and releases the bale onto the bed which is capable of being inclined to meet the track (col. 4, lines 25-30); wherein the track comprises at least two braced rail members (38,38') in a spaced apart relationship; wherein the means to engage and move a bale comprises a backstop (46) slidably engaging the track and comprising at least two grasping arms (48,48') pivotally connected to the backstop on opposing sides of the backstop (col. 5, lines 22-24); further comprising a stop (Fig. 1,not numbered) comprising two prongs extending orthogonally from the rear of the bed to prevent bales loaded on the inclined bed from leaving the bed; wherein the bed comprises floor rails which catch bales being loaded onto the bed; wherein arms

(74,74',75,75') secure bales to the tiltable bed; with respect to claim 10, the retrieval is considered to be the platform shown to be in the center of the bed in Figure 1, and the spurs extending perpendicularly thereto are the arms (74,75).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tetz et al. (6,071,058) in view of Cox et al. (6,079,926). Tetz et al. show an apparatus capable of loading, transporting and stacking bales of hay comprising a vehicle frame supporting an operator cab (12) forward of a bed, the operator cab having a front and a top; an arc shaped track (10) extending from the front of the cab to above the top of the cab; a means to engage and move a bale; wherein the means to engage and move the bale, engages the bale at the front of the cab and moves the bale along the track to above the top of the cab and releases the bale onto the bed; wherein the track comprises at least two braced rail members (14) in a spaced apart relationship; wherein the means to engage and move a bale comprises a backstop support (42) slidably engaging the track and comprising at least two grasping arms (34) fixedly connected to the backstop on opposing sides of the backstop; wherein the bed comprises a floor to catch bales being loaded onto the bed; and wherein the closed end

of the truck bed forms a stop to prevent bales loaded thereon from leaving the bed. With respect to claim 3, although it is not specifically disclosed that the arc has a 98 degree radius, Tetz et al. does disclose that the angle of curvature is between 90 and 135 degrees. A *prima facie* case of obviousness typically exists when the ranges of a claimed composition overlap the ranges disclosed in the prior art. E.g., In re Geisler, 116 F.3d 1465, 1469, 43 USPQ2d 1362, 1365 (Fed. Cir. 1997); In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (CCPA 1976); In re Malagari, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974). Such is the case here. The normal desire of scientists or artisans to improve upon what is already generally known provides the motivation to determine where in a disclosed set of percentage ranges is the optimum combination of percentages. See In re Boesch, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980) ("[D]iscovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art." See, e.g., In re Baird, 16 F.3d 380, 29 USPQ2d 1550 (Fed. Cir. 1994); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). *In re Peterson* Appeal No. 02-1189 (Fed. Cir. January 8, 2003). Furthermore, Applicant merely discloses that the arc radius of 98 degrees is merely a preferred embodiment, and thus lacks criticality.

Tetz et al., however, does not show that the vehicle bed is tiltable to a near vertical position. Cox et al. teach a hay bale retriever and stacker comprising a tiltable bed (16). Tiltable truck beds are well known, and as taught by Cox et al. it would have been obvious to one of ordinary skill in the art to provide that the Tetz et al. apparatus

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have a tiltable bed if one wished to move the articles collected on the bed from one end to the other or to assist in dumping articles from the bed.

5. Claims 1,2,4, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Filippi (4,941,796) in view of Cox et al. De Filippi shows an apparatus capable of loading, transporting and stacking bales of hay comprising a vehicle frame supporting an operator cab forward of a bed (18), the operator cab having a front and a top; an arc shaped track extending from the front of the cab to above the top of the cab; a means to engage and move a bale; wherein the means to engage and move the bale, engages the bale at the front of the cab and moves the bale along the track to above the top of the cab and releases the bale onto the bed; wherein the track comprises at least two braced rail members (32) in a spaced apart relationship; wherein the bed comprises a floor to catch bales being loaded onto the bed; and wherein the closed end of the truck bed forms a stop to prevent bales loaded thereon from leaving the bed.

De Filippi, however, does not show that the vehicle bed is tiltable to a near vertical position. Cox et al. teach a hay bale retriever and stacker comprising a tiltable bed (16). Tiltable truck beds are well known, and as taught by Cox et al. it would have been obvious to one of ordinary skill in the art to provide that the De Filippi apparatus have a tiltable bed if one wished to move the articles collected on the bed from one end to the other or to assist in dumping articles from the bed.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable Smart in view of Craft (4,044,907). Smart discloses a traction train which operates the bale lifting means. Winch cable and pulley type assemblies are well known for lifting. Craft shows

a hay handler comprising a winch means (28) which pivots a cradle which supports the hay bale. Both the traction and winch assemblies are alternate equivalent means of lifting and moving, therefore, it would have been obvious to one of ordinary skill in the art to use the winch taught by Craft as the bale lift mechanism of Smart in order to provide a more secure and supportive means of handling the loads.

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smart in view of Tilley (5,882,163). Although Smart shows a tiltable truck bed which catches and moves bales of hay, a means to controllably move the bales is not disclosed. Tilley teaches a hay bale loader comprising a truck bed (20) having a shift mechanism (21) which controllably moves a bale forward and backward on the bed. It would have been obvious to one of ordinary skill in the art to provide that the bed of Smart include the shift mechanism taught by Tilley in order to more effectively move and remove the bales along and from the bed while maintaining control over their disposition.

8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smart in view of Maclay (6,540,464). Although Smart discloses means of securing bales to the tiltable bed, it is not disclosed that the means of securing lay below the bed and disperse bales to the ground. Maclay teaches an apparatus having grappling tines (20, 22) which extend from below the bed to secure bales to the table, and a feeding means which disperses sections of a bale loaded on the table to the ground (col. 7, lines 15-37).

***Allowable Subject Matter***

9. Claims 18-20 are allowed.

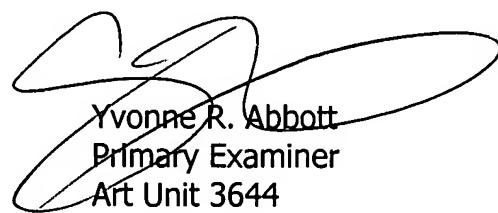
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10. Claims 12, 16 and 17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (571) 272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott  
Primary Examiner  
Art Unit 3644